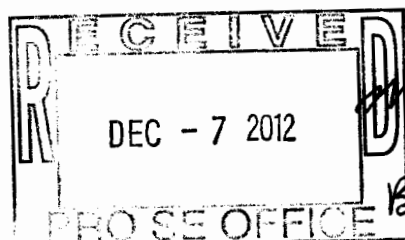


Mondher Bejaoui
63673-054
M-D-C Brooklyn

December 05, 2012

clerk of the court
southern district of New York
500 Pearl street
New York, New York 10007



Matter of United States v. Mondher
Bejaoui : 10 CR 553(SHS)

Dear clerk :

Enclosed please find defendant application
for bail :

1. Application for release on personal
recognizance pursuant to 18 U.S.C 3142(b)

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- 2 - Renewed application for an amendment of the conditions of release pursuant to 18 U.S.C 3142 (F)(2)(B).
- 3 - Renewed application to strike the conditions of release on the ground of a due process violation to the pretrial detention without a reasonable bond. And an excessive bail in violation of the Eighth Amendment to the U.S. constitution.

Also, enclosed please find Exhibit: A-B and C.

truly yours
x Mondher Bejaoui
Mondher Bejaoui
Defendant Pro-se

Application for Bail.

My application consist of three parts:

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A - Application for release on personal
recognizance pursuant to 18 U.S.C 3142(b)

B. Renewed application for an amendment
of the conditions of release pursuant
to 18 U.S.C 3142 (F)(2)(B).

C - Renewed application to strike the
conditions of release on the ground
of a due process violation to the pretrial
detention without a reasonable bond.
And an excessive bail in violation
to the U.S Constitution.

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This application is governed by 18 U.S.C 4241 (e):

If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recouped to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the defendant is subject to the provisions of 3141 et seq.

Few months ago, I have no recollection of the actual date but it was revealed to me that I appeared in court for competency hearing (see Exhibit A: Judge order and transcript of the hearing). And after the hearing I was declared competent to stand trial. Therefore this application

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is within the language of the statute.

A. Release on personal recognizance
pursuant to 18 U.S.C 3142 (b) :

factors in support of my release on personal
recognizance.

1. The factors :

a- I am a 39 year old man who resided in
Kings County for over a decade.

b. Prior to my pretrial detention I lived with
my wife, my daughter and my step son with
strong ties to the Brooklyn area.

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- c. I had graduated from University of Tunis. I am a trained accountant.
- d. Despite my amputated hand and severe abnormality of my breast / chest I had been regularly employed.
- e. I am the sole bread winner and supporter of my family.
- f. The offense is not a crime of violence or involves a narcotic drug.
- G. I have no criminal history conviction, though I was arrested for harassment charges that were dismissed and the prosecution ended in my favor.
- H. I have no history of use of drugs or abuse of alcohol.

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I - I am Lawfully admitted for permanent residence as defined in the Immigration and Nationality Act 8 U.S.C 1101(a)(20).

J - I have no family ties in Tunisia - have family ties here, my wife, daughter and step son.

K - Never traveled to Tunisia for the years I resided in New York

L - I have no personal or professional ties to foreign country.

M - There is no outstanding detainer.

N - I have no passport.

Q - I have no access to large amounts of cash and I will sign a waiver of extradition not only related to Tunisia but all countries.

P - I have no ample means to finance flight.

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R - I have no motive to flee.

S - I have a precarious medical condition and I suffer from various ailments: Hypertension - Epileptic Seizure - Tachycardia - Ulcerative colitis - Compression fracture and severe degenerative disc disease - Chronic nerve damage - Astigmatism - Pneumonia - chest/breast injuries and fear of cancer.

T - I have battled severe depression and panic attacks.

2. The history factors:

a - I have shown a compliance with the federal law during my immigration proceeding

b - During the pendency of the harassment charges between December 2006 and May 15, 2008 (the latter is the date I was unlawfully remanded and detained)

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I had honored over forty (40) court appearances and had been fully compliant with all of the terms and conditions of release.

C. I made no prior attempt to flee in the previous state prosecution.

The Bail Reform Act:

The Bail Reform Act of 1984 is rather comprehensive statutory scheme used to determine whether an arrestee will be released or detained during the pendency of the prosecution 18 U.S.C 3141 et seq. This Act was enacted in order to correct the regrettable circumstances of district courts being compelled to set monetary bails, which, too often, were too high for indigent defendants to meet and thus encumbered with detention prior to

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trial. Significantly, in enacting the Bail Reform Act, Congress recognized "the traditional presumption favoring pretrial release for the majority of federal defendants".

United States v. Berrios-Berrios 791 F.2d 246, 250 (2d Cir),
479 U.S. 978, 107 S.Ct. 562, 93 L.E.d. 2d 568 (1986);

United States v. Morris, 2000 U.S. Dist. Lexis 14163,

2000 WL 1455244, at *3 (N.D.N.Y. Sept 21, 2000)

(noting that "by its very language, the Bail Reform Act demonstrates its favorable inclination toward pretrial release of federal criminal defendants"). Therefore,

the general expectation of the Bail Reform Act is that a defendant shall be released on his own recognizance or unsecured bond.

for the nature of the crime, for all intents and purposes,
for the factors. I am an appropriate candidate to be
released on my own recognizance pursuant to

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18 U.S.C. 3142 (b) or possibly on a rather nominal bond
or for that matter, for the court to apply less restrictions
as strongly urged by 18 U.S.C. 3142 (c)(1)(B).

B - Renewed application for an amendment
of conditions of release pursuant to
18 U.S.C. 3142 (f)(2)(B):

A determination of bail application's conditions
may be reopened at any time before trial if:

The judicial officer finds that information exists
that was not known to the movant at the time
of the hearing and that has material bearing on the
issue whether there are conditions of release that will
reasonably assure the appearance of such person as
required and the safety of any other person and the
community.

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1. Background subsequent to the November 2010 order of release on a bond and combinations of conditions:

On March 1997, I entered the U.S under a B-2 Visa, on february 2002 my I-130 petition was approved - On May 2006 my immigration status adjusted in New York to legal permanent resident under INA-245. I am married with one daughter and one step son - my wife and two children are U.S citizens we live in Brooklyn.

On December 2006, a harassment complaint was filed against me in kingscounty criminal court. I plead not guilty to the charges and complied with court appearances. On May 15, 2008 a posing grand jury returned a second

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harassment charges were filed against me and was remanded and taken to Rikers Island I became victim to physical and sexual assault.

After four (4) years since the prosecution commenced (the final two (2) years I was in pretrial detention) and on October 2010 the Kings County District Attorney moved the court to dismiss the charges filed against me. The case involved one Kawdaz Mansy, the matter was relatively simple and I was, in fact innocent of the alleged crime.

Prior to the disposition of June 2010 I was transfer to a federal court. I don't know why and I don't remember how. recently I learned that I was

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in M-C-C Manhattan.

At no time during the arraignment on the federal charges did the government argue or proffer that I will pose a risk of flight or danger to the community. Rather, my attorney defaulted to its typical posture as a court-appointed counsel and failed to raise the right to be released pending trial.

On November 2010 this court ordered my release on a bond and various conditions that my wife and I couldn't meet.

My wife signed the bond as was required and expressed to the court that the conditions of release were unattainable (see Exhibit B: Letter of Maria Bejaoui to the court). But the court failed

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to explain its reasons for determining that the conditions were indispensable. see United states v. Mantecón-Zayas 949 F.2d 548 (1991) : once a defendant make known to the lower court that the stipulated conditions of release was unattainable then the lower court should have explained its reason for determining that the particular requirement was an indispensable component of the conditions of release

2. The new information:

The circumstances concerning my bail application have changed significantly since the court's November 2010 order:

a. The passage of time : more than twenty four (24)

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months had passed since the ruling on my bail application.

- b- The Government conveyed two plea agreements and in both the amount of time offered is less than what I served in pretrial detention. Miss Lindsay informed me that if I agree to the wrong doing the judge will likely sentence you to time served.
- c- The passage of time will have great impact on my defense. loss of witnesses, non-recollection of events. in all I will receive inadequate defense
- d- The deterioration of my health condition:
 - 1. I have been hospitalized many times during my pretrial detention.

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2. I have been confined to a wheelchair for the past two-year and I don't know if I am substantially paralyzed.
 3. The sudden invasion of my body by bacteria.
 4. Prior to my pretrial detention I was fairly active despite some impairments but now I am suffering from numbers of severe ailments.
 5. This life-threatening situation was further complicated by the fact that I am currently under active investigation by a physician for ~~lung~~ cancer (see Exhibit C: Medical record from M-D-C / downtown New York hospital / Bellevue hospital).
- known that the disease is the leading cause of cancer death in the world. This kind of information increases the level of my severe depression.

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6. the inadequate medical care in the prison system is frightening.

in united states v. Bill Suri (The defendant had been convicted of Bank fraud. the amount of loss exceeded two (2) million dollars. facing substantial prison term. Served few months after his verdict and awaiting sentence. Yet the court orders his release on a lesser restrictive conditions and your honor opined: "the sole purpose of the defendant release is due to his medical condition and of his wife").

for the reasons stated above I respectfully ask the Court to revisit its prior bail determination of November 2010 and order my release pending trial on attainable conditions.

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C. Renewed application to strike the condition of pretrial release on the ground that the excessive conditions violated my rights:

1- To procedural due process under the fifth Amendment to the united states constitution. And

2- To the Eighth Amendment's prohibition against excessive bail.

a. The bond and conditions of release of November 2010 order:

* A 100,000.00 bond secured by three financially responsible person.

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- * Abide by specified restrictions on places to travel
- * An order forbidding me from having contact with one Kawgar Mansy and her family
- * Subject to combination of other conditions.

The 100,000.00 bond is excessive even if its only a bond that needed to be secured by two financially responsible person and one moral svasion known that the court was informed that I have been in state pretrial detention for over two (2) years and the prosecution ended in my favor. The amount of bond and condition of suities were beyond my ability to post.

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The next condition imposed by the court and requested by the government is an order forbidding me from having contact with Kawsar Mansy and her family. The Government failed to indicate if the individuals were victims or potential witnesses. It clear that they are not victims since they were not mention in the accusatory instruments and assuming they are witnesses the prosecutor failed to specify why did they sought the forbidding order. The record reveal that Kawsar Mansy she was the complainant witness in the harassment charges that were unlawfully filed against me and the state did have four (4) years to figure that

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all of Kausar Mansoor's complaints were untrue
subsequently the charges were dismissed.

one of the foundations of our society is the
right of individuals to combine with other persons
in pursuit of common goal by lawful means.
the amount of bond and the excessive condition are
in violation of my constitutional rights.

I reserve my rights to file a memorandum of Law
in the event the prosecution file an opposition to
my application.

Accordingly, I respectfully request that the Court
order my release pending trial on my own
reconizance.

12/05/2012

Copy to:

United States
District Attorney
Office -
Southern District
of New York
One Saint Andrew's Plaza
New York, NY 10007
New York, NY 10007

Respectfully submitted

X Moudher Bejaoui

Moudher Bejaoui

Defendant Pro-Se

Remarque: Remark:

I have predicated to receive copy of the attorney
file by the date I will file this application
Therefore the attorney on record as a stand by counsel
is required to file Exhibit A-B and C
with the court.

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Mondher Bejaoui

Register number

636 73-054 1 case 10 CR 553 (SHS)

M-D-C Brooklyn

PO BOX 32 9002

Brooklyn, NY 11232

To: Clerk of the ^{13th} District
United States
Court

southern District of
New York

500 Pearl Street

New York, NY 10007

